

48A C.J.S. Judges § 337

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

E. Effect of Disqualification of Judge

§ 337. Scope and extent of judge's authority—Disqualification in part

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A judge is generally not disqualified beyond the point of the judge's interest in a case, and the judge may properly refer a single question in which the judge is interested to another tribunal and retain jurisdiction of the main cause.¹ Thus, a judge who is disqualified to hear a divorce action because the judge testifies as a witness regains jurisdiction after entry of the final decree to hear any further proceedings that may arise.² Disqualification, however, may go to the entire action or proceeding even though the affidavit of bias or prejudice refers only to a motion therein.³ The fact that a judge is disqualified by prejudice in the matter of a probate of a will does not disqualify the judge to determine other questions in the administration of the estate.⁴

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Footnotes

1 U.S.—*Warner v. Rossignol*, 538 F.2d 910 (1st Cir. 1976).

Ill.—*Graham v. People ex rel. Rutledge*, 111 Ill. 253, 1884 WL 9954 (1884).

Different causes of action tried together merely for convenience

Cal.—*In re Buchman's Estate*, 132 Cal. App. 2d 81, 281 P.2d 608, 53 A.L.R.2d 451 (2d Dist. 1955).

Issues already tried

The trial court, which had recused itself as to issues that had been severed for separate trial and specifically reserved jurisdiction to rule on those matters previously tried, had authority to enter a final judgment on the issues already tried.

Fla.—*Coastal Petroleum Co. v. Mobil Oil Corp.*, 378 So. 2d 336 (Fla. 1st DCA 1980).

2 Ind.—*State ex rel. Cannon v. Bitzegaio*, 250 Ind. 516, 237 N.E.2d 366 (1968).

3 Mont.—*State ex rel. Stefonick v. District Court, Fifth Judicial Dist., Beaverhead County*, 117 Mont. 86, 157 P.2d 96 (1945).

4 Kan.—*Price v. Gibson*, 165 Kan. 10, 192 P.2d 219 (1948).

Okla.—*State v. Johnson*, 1914 OK 132, 40 Okla. 511, 139 P. 699 (1914).

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